



Strategic Lawsuits Against Public Participation (SLAPP suits)

Anti-SLAPP suit bills have been introduced in Michigan several times and, despite having bi-partisan support, the bills simply never received a hearing. In 1997, Republican Representative Jack Horton and Democratic Representative Liz Brater each introduced bills. Representative Horton, a conservative Lowell Republican, considered SLAPP suits "...an infringement on the constitutional right to petition the government" and said "...they stymie good government". In 2002, Democratic Representative Dave Woodward co-sponsored a bill with Republican Representative Andrew Raczkowski. Twenty-seven states now have anti-SLAPP statutes in place and, in Michigan, the issue has not even been able to get a hearing.

Strategic Lawsuits Against Public Participation, often known as "SLAPP" suits, are designed to intimidate, deter and punish individuals for exercising their First Amendment right to speak out on issues impacting businesses and government actions. Citizens have been sued for testifying before their local elected officials about building permit and zoning change applications, concerns about public education, and for reporting violations of environmental laws to regulatory agencies, to give just three of thousands of examples.

About two-thirds of SLAPP's are brought by private companies doing business with the government. Another 30% are filed by government officials. (*Pring and Canan. (1996). SLAPPs: Getting Sued for Speaking Out. Philadelphia: Temple University Press.*)

There are many reasons why all legislators should be concerned about these lawsuits. SLAPP suits are often intended to bankrupt those who express their opinions in public by embroiling individuals in a lawsuit and forcing them to hire attorneys to defend themselves. In contrast to most litigation, the SLAPP suit is brought not to resolve a problem, but to remove a controversy from the public arena. Those who file SLAPP's do not sue to achieve a litigation outcome; rather, they file to silence their opposition. They are often filed to prevent citizen oversight of government. In a representative democracy, public participation is the cornerstone of the system. In fact, it is an essential mechanism to ensure that public funds are not squandered.

ACLU CASES:

- The ACLU filed a friend of the court brief in a Michigan Supreme Court case where the trial judge ordered a union to pay monetary damages to a non-union contractor for criticizing the quality of the contractor's work at a city council meeting. The judge ordered damages without finding any evidence of "actual malice" - the traditional standard for defamation suits where First Amendment values are at stake. (*J&J Construction v. Bricklayer and Allied Craftsmen Local 1*). Attorney: Richard McHugh.
- The ACLU successfully represented a group of environmentalists who were sued by a county commissioner in retaliation for publicly raising questions about the commissioner's conflict of interest in a landfill. (*McLachlan v. Kneff*). Attorney: Neal Bush.
- A Flint resident was sued for defamation by a police officer for a letter the resident sent to the police chief complaining about mistreatment by the officer. The ACLU filed an amicus brief arguing that the case should be dismissed because the citizen's communication was protected by the First Amendment right to petition the government. The Michigan Court of Appeals upheld the trial court's dismissal of the case. (*Allen v. Mach*). Attorney: Daniel Quick.
- The ACLU successfully represented an Oxford police officer who was sued for defamation by the police chief because the police officer reported to public officials that the chief altered a police report. The police chief used public funds to finance the lawsuit contrary to the state constitutional provision that prohibits the use of public funds for private purposes. The case was dismissed in May, 1999. (*Ford v. Miller*). Attorney: Neal Bush.
- Laurie Fromhart spoke at a Michigan Department of Environmental Quality Hearing against granting a corporation a permit to excavate an area large enough to create a 50-acre lake. She expressed her concerns on behalf of a citizen group called *Stewards of Bridgewater* about the adverse impact the project would have on wetlands and on the neighboring homeowners. The MDEQ denied the permit. In May 2004, just before re-submitting its permit request, the corporation sued Fromhart and others who had spoken out against the project initially in an attempt to intimidate them from speaking out again. In the summer of 2004, after the ACLU agreed to represent Ms. Fromhart and filed a motion to dismiss on First Amendment grounds, the corporation simply dropped the case. (*Sylvester Material Co, Inc. v. Fromhart*) Cooperating attorneys: Daniel Quick and Professor C.J. Peters.

- The ACLU represented Nancy Orewyler, the president of an environmental organization in Macomb County called *Saving Wetlands and Trees, Inc. (SWAT)*. Ms. Orewyler and SWAT have actively opposed the development of wetlands in the Chesterfield Township area. In 2002, the Macomb County Prosecutor brought a lawsuit against corporations seeking to develop the area, Secluded Woods, LLC, Lakeview Jefferson, LLC and Brandenburg Investments, LLC. In 2003, SWAT filed a related lawsuit against the corporations. Both lawsuits were dismissed and the wetlands in question are currently being developed.

Throughout the controversy about development of the wetlands, the corporations threatened to sue Ms. Orewyler and SWAT if they continued to oppose the development of the land. The corporations followed through and sued for trade libel (defamation), trespass, abuse of process, tortious interference, business defamation and product disparagement. The case was dismissed because the other side was not moving forward or attending conferences scheduled by the court.

- The ACLU of Michigan helped to successfully defend a case in Macomb County when a steel company sued a citizens group because the group complained about the loud noise emanating from the factory. Kendor Steel, in Fraser, Michigan, installed a 500-ton stamping press in June 1999. Janet Donahue and her neighbors complained about the intolerable and continuous pounding and vibrations to the City's Building Department, the City Manager, the City Council, and the Police Department from the onset of the problem until the fall of 2000. Immediately following the one and only ticket Kendor received, Ms. Donahue was served with a lawsuit in retaliation for the complaints she made.

Macomb County Circuit Court Judge Donofrio dismissed the lawsuit against Janet Donahue and held that Kendor Steel's claims of malicious prosecution and intentional infliction of emotional distress against Ms. Donohue were without merit. He also adopted the position of the ACLU that Ms. Donohue had a constitutional right to complain to the police about the noise.

STATE AND FEDERAL LEGISLATION:

In June, 2004, Representative Lamar Smith (R-TX) introduced HR 4571, the Law Abuse Reduction Act, designed to reinstate the original intent of Rule 11 of the Federal Rules of Civil Procedures which provides for sanctions against parties who file frivolous claims or defenses, or who file a paper for any improper purpose. The bill would have discouraged frivolous lawsuits by mandating sanctions against attorneys who file baseless claims. On Sept. 14, 2004, the House passed HR 4571 with a majority of republican support. The bill was referred to the Senate Committee on the Judiciary where it died because of no action at the end of the 108th Congress.

27 states have anti-SLAPP statutes:

Although each state's legislation is different, most contain some or all of the following features: (a) a definition of the "public participation" that the bill is designed to protect; (b) a provision that subjects the SLAPP suit to early dismissal if certain facts are proven; (c) a provision that shifts the burden of proof to the SLAPP filer to prove the case should survive the early motion to dismiss; and/or (d) allowance for the recovery of costs, damages and/or attorneys fees if the case is in fact dismissed.

States with Anti-SLAPP Legislation: (in alphabetical order)

Arizona: The Public Participation in Government was signed into law April 28, 2006. ARIZ. REV. STAT. ANN. §§ 12-751 - 12-752 (2009).

Arkansas: The Citizen Participation in Government Act was signed into law April 11, 2005. ARK. CODE ANN. §§ 16-63-501 - 16-63-508 (2009)

California: California's Claim Arising from Person's Exercise of Constitutional Right of Petition or Free Speech – Special Motion to Strike law was enacted in 1993. ANN.CAL.C.C.P. §425.16.

Delaware: Delaware enacted the Actions Involving Public Petition and Participation, Standards for Motion to Dismiss and Summary Judgment in Certain Cases Involving Public Petition and Participation and Recovery of Damages in Actions Involving Public Petition and Participation. DEL. CODE. ANN. tit. 10 §§ 8136-8138 (2009).

Florida: FLA. STAT. §§ 768.295, 720.304(4)

Georgia: Exercise of rights of freedom of speech and right to petition government for redress of grievances; legislative findings; verification of claims; definitions; procedure on motions; exception GA. CODE ANN § 9-11-11.1 (2008)

Hawaii: HAW. Rev. Stat Vol. 13 §§634F-1 – 634F-4 (2002)

Illinois: 735 ILL. COMP. STAT. 110/1, 110/5, 110/10, 110/15, 110/20, 110/25, 110/30, 110/35, 110/99 (2008).

Indiana: Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of Indiana in Connection with a Public Issue. IND CODE §§ 34-7-7-1 – 34-7-7-10 (2008).

Louisiana: Special Motion to Strike. LA. CODE CIV. PROC. ANN. art. 971 (2008)

Maine: Special Motion to Dismiss. ME. REV. STAT. ANN. tit. 14 § 556 (2008).

Maryland: Strategic Lawsuits Against Public Participation. MD. CODE ANN. § 5-807 (2008).

Massachusetts: Strategic Litigation Against Public Participation: Special Motion To Dismiss. MASS. GEN. LAWS. ANN. ch. 231 § 59H (2008).

Minnesota: Declaratory, Corrective, Administrative Remedies. Free Speech; Participation in Government. MINN. STAT. §§ 554.01 – 554.05 (2008).

Missouri: 537.528. Actions for damages for conduct or speech at public hearings and meetings to be considered on expedited basis-procedural issues. MO. REV. STAT. § 537-528.1-7 (2008).

Nebraska: NEB. REV. STAT. §§ 25-21,241- 25-21,246 (2008).

Nevada: Nevada's anti-SLAPP statute was enacted in 1993 and amended in 1997. NEV. REV. STAT. §§ 41.635 – 41.670 (2008).

New Mexico: New Mexico's anti-SLAPP law was enacted in April of 2001. N.M. STAT. ANN. §§ 38-2-9.1 – 38-2-9.2 (2008).

New York: N.Y. CIV. RIGHTS 70-a; 76-a (2008); N.Y. C.P.L.R 3211(g); 3212(h) (2009)

Oklahoma: Privileged Communications defined –Exemption from Libel. OKLA. STAT. tit. 12, chap. 25 § 1443.1 (2008)

Oregon: OR. REV. STAT. §§ 31.150 – 31.155 (2008).

Pennsylvania: 27 PA. CONS. STAT §§ 7707 – 7708 (2008); 27 PA. CONS. STAT §§ 8301 – 8305 (2008).

Rhode Island: R.I. GEN. LAWS §§ 9-33-1 – 9-33-4 (2008); R.I. GEN. LAWS § 45-24-67 (2008);

Tennessee: TENN. CODE ANN. §§ 4-21-1001 – 4-21-1004 (2009).

Utah: UTAH CODE ANN. §§ 78B-6-1401 – 78B-6-1405 (2008)

Washington: Good faith communication to government agency-When agency or attorney general may defend against lawsuit- Costs and fees. WASH. REV. CODE § 4.24.520 (2008).

States with Judicial Doctrine on SLAPPs (No Statute)

West Virginia: There was no evidence of anti-SLAPP bills, but there have been several cases. *Webb v. Fury* (282 S.E.2d 28); *Harris v. Adkins* (432 S.E.2d 549)

ARTICLES AND EDITORIALS:

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<http://www.detnews.com/2004/editorial/0407/14/a08-211646.htm>

The Detroit News – *Harsh Critics Risk Lawsuits* by Joel Kurth, August 19, 2001
<http://www.detnews.com/2001/metro/0108/20/b01-272671.htm>

The Flint Journal Editorial – May 6, 2004

Public Policy Brief – Department of Agricultural Economics, Michigan State University Extension, November 2001
http://www.msue.msu.edu/aoe/slg/LandUse_policy_briefs/ppb-SLAPP.pdf

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